

*a***UNITED OVERSEAS BANK****v.****SIGNET & CO SDN BHD***b*

HIGH COURT SABAH & SARAWAK, KUCHING
MUHAMMAD KAMIL AWANG J
[SUIT NO: 22-212-98-II]
14 MAY 1999

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CIVIL PROCEDURE: *Jurisdiction - High Court - Striking out for want of jurisdiction - Courts of Judicature Act 1964, s. 23 - Proper court to commence proceedings - Where cause of action arose - Forum convenience*

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The defendant whilst having a branch in Kuching, is based and has a registered office in Kuala Lumpur. The disputed transaction occurred in the Kuching branch and the manager of the Kuching branch conducted all matters relating to the subject matter of the disputed transaction. The plaintiff, which is based in Singapore, took out a writ of summons in the High Court at Kuching. In response, the defendant filed an application under s. 23 Courts of Judicature Act 1964 to set aside the writ on the ground that the High Court at Kuching had no jurisdiction to hear the writ.

*e***Held:***f*

[1] The plaintiff had properly filed the suit in the High Court at Kuching as the cause of action arose in the defendant's branch office in Kuching.

[2] Although the plaintiff is from Singapore and the defendant's registered office is in Kuala Lumpur, all the matters in the case were handled by the defendant's branch manager in Kuching.

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[Defendant's application dismissed.]

Case(s) referred to:

Bank Bumiputra Malaysia Bhd v. Melewar Holdings Sdn Bhd & Ors [1990] 1 CLJ 1246 (**refd**)

Dayasar Corp Sdn Bhd v. CP Ng & Co Sdn Bhd [1990] 1 CLJ 262 (**folld**)

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Distillers Co (Bio-Chemicals) Ltd v. Thompson [1971] 1 All ER 694 (**folld**)

Malayan Banking Bhd v. International Tin Council & Another Appeal [1989] 2 CLJ 961 (**refd**)

Sova Sdn Bhd v. Kasih Sayang Realty Sdn Bhd [1988] 2 MLJ 268 (**refd**)

Sykt Nip Kui Cheong Timber Contractor v. Safety Life & General Insurance Co Sdn Bhd [1975] 2 MLJ 115 (**refd**)

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Legislation referred to:

Courts of Judicature Act 1964, ss. 3, 23

Federal Constitution, art. 121

For the plaintiff - Stanley Eddy; M/s Battenberg & Talma Advoc

For the defendant - Cheng Hui Hong; M/s Cheng & Cheng Advoc

Reported by Izzaty Izzuddin

JUDGMENT**Muhammad Kamil Awang J:**

The plaintiff took out a writ of summons against the defendant on 9 October 1998 and the writ was amended and reissued on 22 October 1998. The defendant entered a conditional appearance, and brought the defendant's application (encl. 17) under s. 23 Courts of Judicature Act 1964 to set aside the amended writ on the ground that this court has no jurisdiction to hear the writ. The application is supported by the affidavit of Lim Phooi Kee affirmed on 30 November 1998, and is opposed by the affidavit in opposition of Lim Mei Ann affirmed on 22 January 1999.

Facts

Kuching Plywood Bhd. ("KPB") shares were pledged by one Tan Soon Ang and Oi Tek Peng ("the Pledgors") to the plaintiff as a security for a third party (Plytech Engineering Pte. Ltd.) borrowing with the plaintiff.

On an inquiry by the plaintiff, the defendant informed by a letter dated 10 October 1997 (LMA 2) to the plaintiff that the defendant was the secretarial agent of KPB, and by a fax transmission on 9 February 1998 (LMA 3) informed the plaintiff to complete the transfer deed and send the KPB's shares to the defendant for registration.

On 20 February 1998, the plaintiff sent a letter (LMA 4) to the defendant at its Kuching Branch office the transfer form and two shares certificates. The plaintiff remitted payment for stamp duty and registration fee.

Subsequently, the defendant exchanged KPB's shares for WTK's shares and released the WTK's shares to the pledgors. Letters of authorization from the pledgors were addressed to the defendant's Kuching Branch office (LMA 5 and 6). The defendant's officer, Mr. John Sim, was the manager of the defendant's Kuching branch office, who conducted all matters relating to the subject-matter of the action herein.

- a* When the plaintiff wrote to the defendant at their registered office in Kuala Lumpur, the Executive Director had to go down to Kuching to investigate the matter (LMA 7).

The issue before this court is whether the court has jurisdiction to hear the writ application of the plaintiff.

- b* Learned counsel for the defendant submitted that there were foreign elements in the case. The plaintiff is based in Singapore and the defendant is based in Kuala Lumpur. The pledgors were based in Singapore and Johor respectively. The defendant had a branch office in Kuching which handled all matters of the defendant. The cause of action in the case arose in Kuching.

The grounds for the defendant's application as stated in the summons in chambers are:

- d* (i) the cause of action did not arise in Sarawak; and/or
- (ii) the defendant's registered office is in Kuala Lumpur and not within the jurisdiction of this court; and/or
- (iii) the plaintiff's registered office is in the Republic of Singapore and not within the jurisdiction of this court; and/or
- e* (iv) the facts on which the proceedings are based to exist or are alleged to have occurred are not within the jurisdiction of this court; and/or
- (v) the potential third parties are resident outside the jurisdiction of this court.
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Thus Kuching High Court is not the forum convenience for hearing of this case. See *Sova Sdn Bhd v. Kasih Sayang Realty Sdn Bhd* [1988] 2 MLJ 268.

- g* Learned counsel for the plaintiff submitted that the breach of contract occurred in Kuching. Although the defendant has a registered office in Kuala Lumpur, it has its branch office in Kuching, managed by John Sim, which handled all matters relating to the shares transfer and the registration of the KPB shares. When the KPB shares were exchanged into WTK shares, the transaction thereof was done by the Kuching branch. The alleged breach was committed in Kuching, and thus the right of the plaintiff's claim, *ie*, the cause of action arose in Kuching. Therefore, the plaintiff had rightly filed the claim in the High Court, Kuching.

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In *Distillers Co (Bio-Chemicals) Ltd v. Thompson (By Her Next Friend Arthur Leslie Thompson)* 1 All ER 694, the House of Lords held that it was not necessary that every ingredient of the cause of action should have occurred within the jurisdiction, nor was it necessary, or sufficient, that the last ingredient, ie, that which completed the cause of action, should have occurred within the jurisdiction; what was necessary was that the act, or omission, on the part of the first defendant which gave the plaintiff his cause of complaint should have been performed within the jurisdiction.

The High Court has jurisdiction as clearly determined by s. 23 of the Courts of Judicature Act 1964, which reads:

23(1) Subject to the limitations contained in Article 128 of the Constitution the High Court shall have jurisdiction to try all civil proceedings where:

(a) the cause of action arose.

(b) the defendant or one of several defendants resides or has his place of business,

(c) the facts on which the proceedings are based exist or are alleged to have occurred, or

(d) any land the ownership of which is disputed is situated,

within the local jurisdiction of the Court and notwithstanding anything contained in this section in any case where all parties consent in writing within the local jurisdiction of the other High Court.

In *Dayasar Corp Sdn Bhd v. CP Ng & Co Sdn Bhd* [1990] 1 CLJ 262; [1990] 1 MLJ 191 the court held that the issue of which High Court has jurisdiction over a matter is determined by s. 23 of the Courts of Judicature Act 1964. Since the respondent is resident in Kuching, the Kuching High Court must assume jurisdiction. Alternatively, considered from the point of view of forum convenience, as the respondent is residing in Kuching and the witnesses are in Kuching and the transaction was in Kuching, learned Judge agreed with *Sova Sdn Bhd v. Kasih Sayang Realty Sdn Bhd*'s case (*supra*) where it was held that it must have been within the contemplation of the legislature to distribute work according to the various High Courts for the convenience of all concerned.

In *Syarikat Nip Kui Cheong Timber Contractor v. Safety Life And General Insurance Co Sdn Bhd* [1975] 2 MLJ 115, Hashim Yeop Sani J (as he then was) held that the definition of local jurisdiction (in s. 3 of the Courts of Judicature Act 1964) set out the territorial jurisdiction of the High Court of Malaya and the High Court of Borneo as given in art. 121 of the

a Constitution. While matters can be heard in any court or the courts in Malaya, I am of the view it was certainly not the intention of the legislature for any court in Malaya to assume jurisdiction of a matter arising in or which should be filed in a Borneo court.

b In *Bank Bumiputra Malaysia Bhd v. Melewar Holdings Sdn Bhd & Ors* [1990] 1 CLJ 1246 the court held that under s. 23(a) of the Courts of Judicature Act, where the action arose to determine the local jurisdiction failing which the courts have to look into the next alternatives, *ie*, the defendant's residence or place of business (sub-s. (b)) or then on to the next sub-ss. (c) and (d) of the Act. See also *Malayan Banking Bhd v. International Tin Council & Another Appeal* [1989] 2 CLJ 961; [1989] 3 MLJ 286 (FC).

d In the instant case, the cause of action arose in the defendant's branch office in Kuching. Although the plaintiff is from Singapore, the defendant's registered office is in Kuala Lumpur, all matters in the case was handled by John Sim, the defendant's manager in Kuching. In my judgment, since the cause of action arose in Kuching, the plaintiff has properly filed the suit here. I would not allow the defendant's application, and dismissed the application with costs to the plaintiff. I order that the defendant will, within 14 days of the order, file its defence.

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